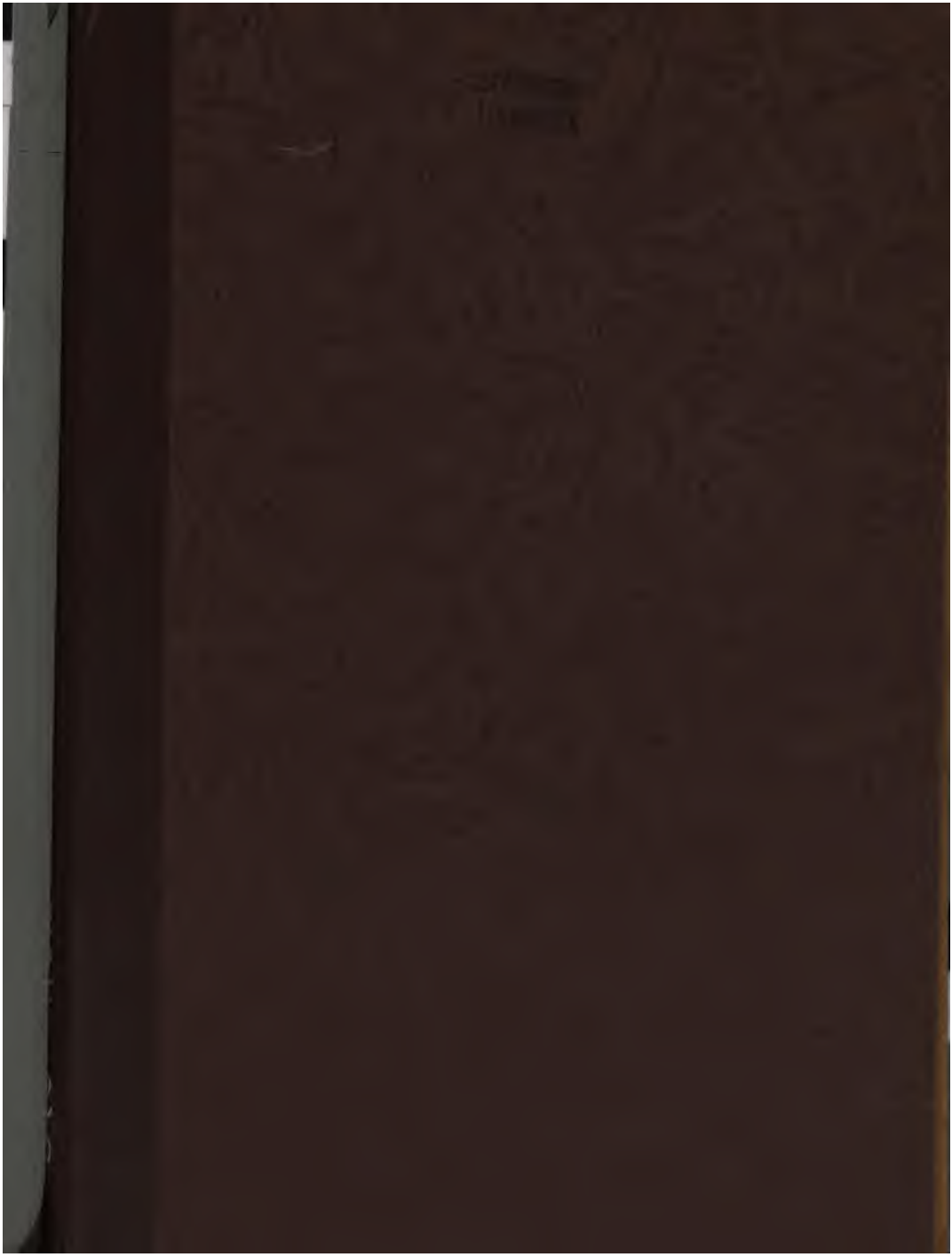

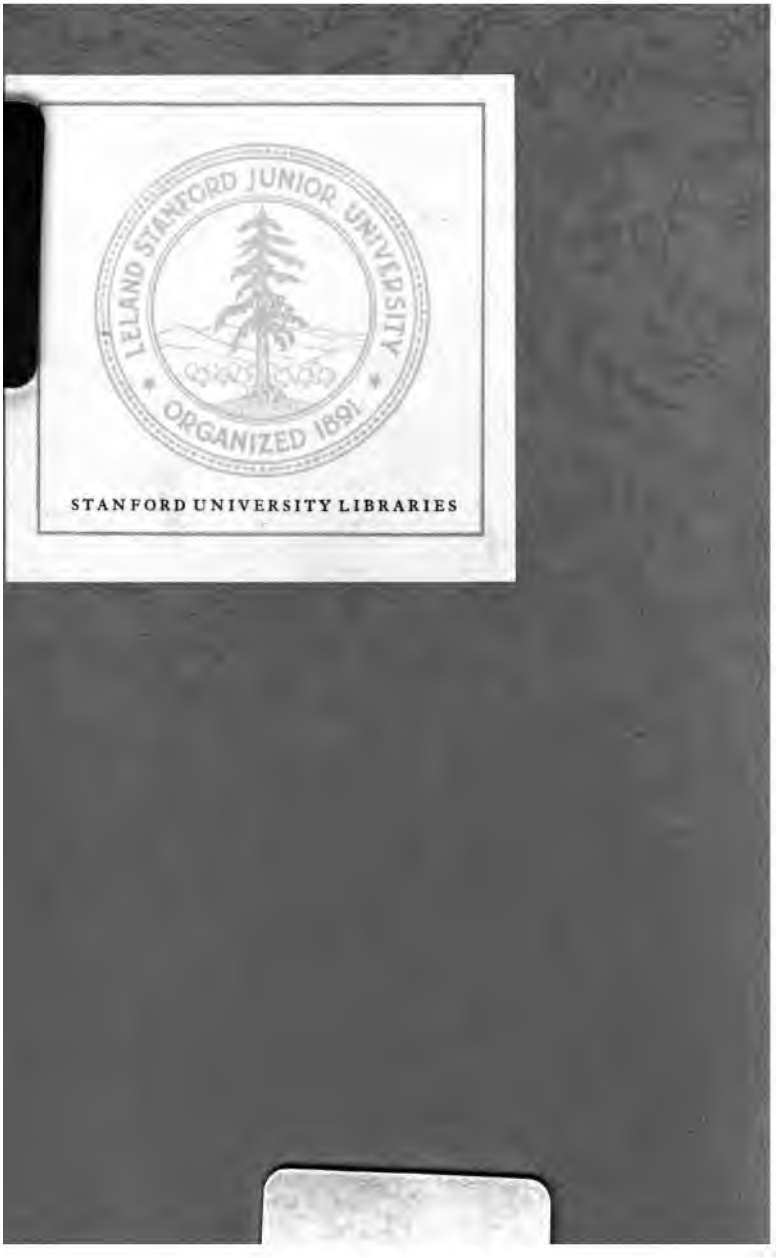
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ALBERT BUSHNELL HART AND EDWARD CHANNING,

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NOVEMBER, 1896.

CONSTITUTIONAL DOCTRINES OF WEBSTER, HAYNE AND CALHOUN.

NEW YORK

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1896.

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COLONIAL AND CONSTITUTIONAL.

No. 30—November, 1896.

CONSTITUTIONAL DOCTRINES OF WEBSTER, HAYNE AND CALHOUN.

CONTENTS OF THIS NUMBER.

Extracts from Documents and Speeches.

No discussion in Congress aroused so much public interest, between 20 and 1850, as the series of debates on the nature of the Union, in 30 and 1833. In both cases the Northern champion was Daniel Web-er; in 1830 he chose out Hayne as his adversary, but his real object is to force him to a clear statement of the doctrine of nullification hich had been set forth by Calhoun in 1828. The evidence shows at Webster had carefully read the "Exposition of 1828"; and his gument was intended to meet it. In 1833, he had the opportunity to nfront Calhoun in the senate and they crossed swords in the masterly shion shown in the extracts below.

The issue was, whether or no a state could be compelled to accept an act of Congress which it believed to be unconstitutional. The immediate effect of these speeches was to concentrate the arguments of that critical period; but the later effects were even more important. South Carolina continued at intervals to reassert the right of nullification, or if need be of secession, down to 1861; and Webster's line of argument became the standard defense of the Union, and had great influence in determining the North to resist secession in 1861.

The extracts are made from the collected writings,—Daniel Webster, *Works*, and John C. Calhoun, *Works*—as being the most authoritative texts; and from the records of debates in Congress—Hayne's speech. A set of extracts from three of these speeches will be found printed in Alexander Johnston, *Representative American Orations*, I.

The Virginia and Kentucky Resolutions, to which both sides frequently allude, and the secession ordinances, which illustrate the farthest point reached in States Rights, are printed in *American History Leaflets*, Nos. 12, 15; Lincoln's doctrine as to the Union in the same series, No. 18.

Brief accounts of the controversy over nullification (including these speeches) may be found in H. von Holst, *John C. Calhoun*, ch. iv; H. C. Lodge, *Daniel Webster*, chs. vi, vii; Woodrow Wilson, *Division and Reunion*, ch. ii; W. G. Sumner, *Andrew Jackson*, chs. x, xiii. More exhaustive accounts in George T. Curtis, *Life of Daniel Webster*, I, chs. xvi—xix; George Tucker, *History of the United States*, IV, chs. xxvi, xxvii; H. Von Holst, *Constitutional History*, I, ch. xii.

Special works on the subject are David F. Houston, *Critical Study of Nullification in South Carolina* (Harvard Historical Studies, III.); Caleb W. Loring, *Nullification, Secession, Webster's Argument.* A brief bibliography on the subject is Channing and Hart, *Guide to the Study of American History*, § 183, with references to other bibliographies.

1—1828. Calhoun's South Carolina Exposition.

Our system, then, consists of two distinct and independent Governments. The general powers, expressly delegated to the General Government, are subject to its sole and separate control; and the States cannot, without violating the constitutional compact, interpose their authority to check, or in any manner to counteract its movements, so long as they are confined to the proper sphere. So, also, the peculiar and local powers reserved to the States are subject to their exclusive control; nor can the General Government interfere, in any manner, with them, without violating the Constitution.

In order to have a full and clear conception of our institutions, it will be proper to remark that there is, in our system, a striking distinction between *Government* and

Sovereignity. The separate governments of the several States are vested in their Legislative, Executive, and Judicial Departments; while the sovereignty resides in the people of the States respectively. The powers of the General Government are also vested in its Legislative, Executive, and Judicial Departments, while the sovereignty resides in the people of the several States who created it. But, by an express provision of the Constitution, it may be amended or changed by three fourths of the States; and thus each State, by assenting to the Constitution with this provision, has modified its original right as a sovereign, of making its individual consent necessary to any change in its political condition; and, by becoming a member of the Union, has placed this important power in the hands of three fourths of the States,—in whom the highest power known to the Constitution actually resides. Not the least portion of this high sovereign authority resides in Congress, or any of the departments of the General Government. They are but the creatures of the Constitution, and are appointed but to execute its provisions; and, therefore, any attempt by all, or any of these departments, to exercise any power which, in its consequences, may alter the nature of the instrument, or change the condition of the parties to it, would be an act of usurpation.....

As a substitute for the rightful remedy, in the last resort, against the encroachments of the General Government on the reserved powers, resort has been had to a rigid construction of the Constitution. A system like ours, of divided powers, must necessarily give great importance to a proper system of construction; but it is perfectly clear that no rule of construction, however perfect, can, in fact, prescribe bounds to the operation of power. All such rules constitute, in fact, but an appeal from the minority to the justice and reason of the majority; and if such appeals were sufficient of themselves to restrain the avarice or ambition of those vested with power, then may a system of technical construction be sufficient to protect against the encroachment of power; but, on such supposition, reason and justice might alone be relied on, without the aid of any constitutional or artificial restraint whatever.....

If it be conceded, as it must be by every one who is the

least conversant with our institutions, that the sovereign powers delegated are divided between the General and State Governments, and that the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty,—of which the States cannot be divested without losing their sovereignty itself,—and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is, in reality, not to divide it at all; and to reserve such exclusive right to the General Government (it matters not by what department to be exercised), is to convert it, in fact, into a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights. It is impossible to understand the force of terms, and to deny so plain a conclusion. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the States and the General Government. But the existence of the right of judging of their powers, so clearly established from the sovereignty of States, as clearly implies a veto or control, within its limits, on the action of the General Government, on contested points of authority; and this very control is the remedy which the Constitution has provided to prevent the encroachments of the General Government on the reserved rights of the States; and by which the distribution of power, between the General and State Governments, may be preserved for ever inviolable, on the basis established by the Constitution. It is thus effectual protection is afforded to the minority, against the oppression of the majority.....

.....How is the remedy to be applied by the States? In this inquiry a question may be made,—whether a State can interpose its sovereignty through the ordinary Legislature, but which the committee do not deem it necessary to investigate. It is sufficient that plausible reasons may be assigned against this mode of action, if there be one (and there is one) free from all objections. Whatever doubts may be raised as to the question,—whether the respective Legisla

tures fully represent the sovereignty of the States for this high purpose, there can be none as to the fact that a Convention fully represents them for all purposes whatever. Its authority, therefore, must remove every objection as to form, and leave the question on the single point of the right of the States to interpose at all. When convened, it will belong to the Convention itself to determine, anthoritatively, whether the acts of which we complain be unconstitutional; and, if so, whether they constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition of the State to protect its right. If this question be decided in the affirmative, the Convention will then determine in what manner they ought to be declared null and void within the limits of the State; which solemn declaration, based on her rights as a member of the Union, would be obligatory, not only on her own citizens, but on the General Government itself; and thus place the violated rights of the State under the shield of the Constitution.....

If the committee do not greatly mistake, the checking or veto power never has, in any country, or under any institution, been lodged where it was less liable to abuse. The great number, by whom it must be exercised, of the people of a State,—the solemnity of the mode,—a Convention specially called for the purpose, and representing the State in her highest capacity,—the delay,—the deliberation,—are all calculated to allay excitement,—to impress on the people a deep and solemn tone, highly favorable to calm investigation and decision. Under such circumstances, it would be impossible for a mere party to maintain itself in the State, unless the violation of its rights be palpable, deliberate, and dangerous. The attitude in which the State would be placed in relation to the other States,—the force of public opinion which would be brought to bear on her,—the deep reverence for the General Government,—the strong influence of all public men who aspire to office or distinction in the Union,—and, above all, the local parties which must ever exist in the State, and which, in this case, must ever throw the powerful influence of the minority on the side of the General Government,—constitute impediments to the exercise of this high protective right of the State, which must render it safe. So powerful, in fact, are these difficulties, that nothing but

truth and a deep sense of oppression on the part of the people of the State, will ever sustain the exercise of the power;—and if it should be attempted under other circumstances, it must speedily terminate in the expulsion of those in power, to be replaced by others who would make a merit of closing the controversy, by yielding the point in dispute.

.....But suppose in this the Committee should be mistaken,—still there exists a sufficient security. As high as this right of interposition on the part of a State may be regarded in relation to the General Government, the constitutional compact provides a remedy against its abuse. There is a higher power,—placed above all by the consent of all,—the creating and preserving power of the system,—to be exercised by three-fourths of the States,—and which, under the character of the amending power, can modify the whole system at pleasure,—and to the acts of which none can object. Admit, then, the power in question to belong to the States,—and admit its liability to abuse,—and what are the utmost consequences, but to create a presumption against the constitutionality of the power exercised by the General Government,—which, if it be well founded, must compel them to abandon it; or, if not, to renounce the difficulty by obtaining the contested power in the form of an amendment to the Constitution. If, on an appeal for this purpose, the decision be favorable to the General Government, a disputed power will be converted into an expressly granted power;—but, on the other hand, if it be adverse, the refusal to grant will be tantamount to an inhibition of its exercise; and thus, in either case, the controversy will be determined. And ought not a sovereign State, as a party to the constitutional compact, and as the guardian of her citizens and her peculiar interests, to have the power in question? Without it, the amending power must become obsolete, and the Constitution, through the exercise of construction, in the end utterly subverted.....

.....Is there danger, growing out of this division, that the State Legislatures may encroach on the powers of the General Government? The authority of the Supreme Court is adequate to check such encroachments. May the General Government, on the other hand, encroach on the rights reserved to the States respectively? To the States

respectively—each in its sovereign capacity—is reserved the power, by its veto, or right of interposition, to arrest the encroachment, and, finally, may this power be abused by a State, so as to interfere improperly with the powers delegated to the General Government? There is provided a power, even over the Constitution itself, vested in three-fourths of the States, which Congress has the authority to invoke, and may terminate all controversies in reference to the subject, by granting or withholding the right in contest. Its authority is acknowledged by all; and to deny or resist it, would be, on the part of the State, a violation of the constitutionl compact, and a dissolution of the political association, as far as it is concerned. This is the ultimate and highest power,—and the basis on which the whole system rests.....—JOHN C. CALHOUN, *Works*, VI., 36–55 passim.

2—1830, Jan. 20. Webster's First Reply to Hayne.

.....Consolidation!—that perpetual cry both of terror and delusion,—Consolidation! Sir, when gentlemen speak of the effects of a common fund, belonging to all the States, as having a tendency to consolidation, what do they mean? Do they mean, or can they mean anything more than that the union of the States will be strengthened by whatever continues or furnishes inducements to the people of the States to hold together? If they mean merely this, then no doubt, the public lands as well as everything else in which we have a common interest, tend to consolidation; and to this species of consolidation every true American ought to be attached; it is neither more or less than strengthening the union itself. This is the sense in which the framers of the Constitution use the word *consolidation*, and in this sense I adopt and cherish it. They tell us, in the letter submitting the Constitution to the consideration of the country, that, "In all our deliberations on this subject, we kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less

rigid on points of inferior magnitude than might have been otherwise expected."

This, Sir, is General Washington's consolidation. This is true constitutional consolidation. I wish to see no new powers drawn to the general government; but I confess I rejoice in whatever tends to strengthen the bond that unites us, and encourages the hope that our Union may be perpetual. And therefore I cannot but feel regret at the expression of such opinions as the gentleman has avowed, because I think their obvious tendency is to weaken the bond of our connection. I know that there are some persons in the part of the country from which the honorable member comes, who habitually speak of the Union in terms of indifference, or even of disparagement. The honorable member himself is not, I trust, and can never be, one of these. They significantly declare, that it is time to calculate the value of the Union; and their aim seems to be to enumerate, and to magnify, all the evils, real and imaginary, which the government under the Union produces.

The tendency of all these ideas and sentiments is obviously to bring the Union into discussion, as a mere question of present and temporary expediency; nothing more than a mere matter of profit and loss. The Union is to be preserved, while it suits local and temporary purposes to preserve it; and to be sundered whenever it shall be found to thwart such purposes. Union, of itself, is considered by the disciples of this school as hardly a good. It is only regarded as a possible means of good; or, on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital necessity to our welfare. Sir, I deprecate and deplore this tone of thinking and acting. I deem far otherwise of the union of the States; and so did the framers of the Constitution themselves. What they said, I believe; fully and sincerely believe, that the union of the States is essential to the prosperity and safety of the States. I am a unionist, and, in this sense, a national republican. I would strengthen the ties that hold us together. Far, indeed, in my wishes, very far distant be the day, when our associated and fraternal stripes shall be severed asunder, and when that happy constellation under which we have risen to so much renown

shall be broken up, and sink, star after star, into obscurity and night!—DANIEL WEBSTER, *Works*, III., 257—259.

3—1830, Jan. 26. Hayne's Reply to Webster.

.....It cannot be doubted, and is not denied, that, before the formation of the constitution, each State was an independent sovereignty, possessing all the rights and powers appertaining to independent nations; nor can it be denied that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the Federal Government. This would have been the case, even if no positive provision to that effect had been inserted in that instrument. But to remove all doubt, it is expressly declared, by the tenth article of the amendments of the constitution, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, or reserved to the states, respectively, or to the people." The true nature of the Federal constitution, therefore is (in the language of Mr. Madison) "a compact to which the states are parties"—a compact by which each state, acting in its sovereign capacity, has entered into an agreement with the other states, by which they have consented that certain designated powers shall be exercised by the United States, in the manner prescribed in the instrument. Nothing can be clearer, than that, under such a system, the Federal Government, exercising strictly delegated powers, can have no right to act beyond the pale of its authority, and that all such acts are void. A state, on the contrary, retaining all powers not expressly given away, may lawfully act in all cases where she has not voluntarily imposed restrictions on herself. Here then, is a case of compact between sovereigns; and the question arises, what is the remedy for a clear violation of its express terms by one of the parties? And here the plain obvious dictate of common sense is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases, "that, where resort can be had to no common superior, the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated" (Madison's Report, p. 20.). When it

is insisted by the gentleman that one of the parties (the Federal Government) "has the power of deciding ultimately and conclusively upon the extent of its own authority," I ask for the grant of such a power. I call upon the gentleman to show it to me in the constitution. It is not to be found there. If it is to be inferred from the nature of the compact, I aver that not a single argument can be urged in support of such an inference, in favor of the Federal Government, which would not apply, with at least equal force, in favor of a State. All sovereigns are of necessity equal; and any one State, however small in population or territory, has the same rights as the rest, just as the most insignificant nation in Europe is as much sovereign as France, or Russia, or England.

The very idea of a division of power by compact, is destroyed by a right claimed and exercised by either to be the exclusive interpreter of the instrument..... It only remains therefore to inquire whether the States have surrendered their sovereignty, and consented to reduce themselves to mere corporations. The whole form and structure of the Federal Government, the opinions of the framers of the constitution, and the organization of the State Governments, demonstrate that, though the states have surrendered certain specific powers, they have not surrendered their sovereignty. They have each an independent Legislature, Executive, and Judiciary, and exercise jurisdiction over the lives and property of their citizens. They have, it is true, voluntarily restrained themselves from doing certain acts, but, in all other respects, they are as omnipotent as any independent nation whatever. Here, however, we are met by the argument, that the constitution was not formed by the States in their sovereign capacity, but by the people; and it is therefore inferred that, the Federal Government being created by all the people, must be supreme; and though it is not contended that the constitution may be rightfully violated, yet it is insisted that from the decision of the Federal Government there can be no appeal. It is obvious that this argument rests on the idea of state inferiority. Considering the Federal Government as one whole, and the States merely as component parts, it follows, of course, that the former is as much superior to the latter as

the whole is to the parts of which it is composed. Instead of deriving power by delegation from the States to the union, this scheme seems to imply that the individual States derive their power from the United States, just as petty corporations may exercise so much power, and no more, as their superior may permit them to enjoy. This notion is entirely at variance with all our conceptions of State rights, as those rights were understood by Mr. Madison and others, at the time the constitution was framed. I deny that the constitution was framed by the people in the sense in which that word is used on the other side, and insist that it was framed by the States acting in their sovereign capacity. When, in the preamble of the constitution, we find the words "We the people of the United States," it is clear they can only relate to the people as citizens of the several states, because the Federal Government was not then in existence.

We accordingly find, in every part of that instrument, that the people are always spoken of in that sense. Thus, in the second section of the first article it is declared, that "the House of Representatives shall be composed of members chosen every second year, by the people of the several States." To show that, in entering into this compact, the States acted in their sovereign capacity, and not merely as parts of one great community, what can be more conclusive than the historical fact that, when every State had consented to it except one, she was not held to be bound?.....

But, the gentleman insists that the tribunal provided by the constitution for the decision of controversies between the States and the Federal Government, is the Supreme Court, and here again I call for the authority on which the gentleman rests the assertion, that the Supreme Court has any jurisdiction whatever over questions of sovereignty between the States and the United States. When we look into the constitution we do not find it there. I put entirely out of view any act of Congress on the subject. We are not looking into laws, but the constitution.

It is clear that questions of sovereignty are not the proper subjects of judicial investigation. They are much too large, and of too delicate a nature, to be brought within the jurisdiction of a court of justice.....

.....When it is declared that the constitution, and

laws of the United States made in pursuance thereof, shall be the supreme law of the land, it is manifest that no indication is given either as to the power of the Supreme Court to bind the States by its decisions, nor as to the course to be pursued in the event of laws being passed not in pursuance of the constitution.....

.....If the Supreme Court of the United States can take cognizance of such a question, so can the Supreme Courts of the States. But, sir, can it be supposed for a moment, that, when the States proceeded to enter into the compact, called the constitution of the United States, they could have designed, nay, that they could, under any circumstances, have consented to leave to a court to be created by the Federal Government, the power to decide, finally, on the extent of the powers of the latter, and the limitations on the powers of the former? If it had been designed to do so, it would have been so declared and assuredly some provision would have been made to secure, as umpires, a tribunal somewhat differently constituted from that whose appropriate duties is the ordinary administration of justice. But to prove, as I think conclusively, that the Judiciary were not designated to act as umpires, it is only necessary to observe that, in a great majority of cases, that court could manifestly not take jurisdiction of the matters in dispute.....

.....the next point to be considered is, whether Congress themselves possess the right of deciding conclusively on the extent of their own powers. This I know is a popular notion, and it is founded on the idea, that, as all the States are represented here, nothing can prevail which is not in conformity with the will of the majority; and it is supposed to be a republican maxim "that the majority must govern."....

Now will any one contend that it is the true spirit of this Government that the will of a majority of Congress, should, in all cases, be the supreme law?.....If the will of a majority of Congress is to be the supreme law of the land, it is clear the constitution is a dead letter, and has utterly failed of the very object for which it was designed—the protection of the rights of the minority. But when, by the very terms of compact, strict limitations are imposed on every *branch of* the Federal Government, and it is, moreover, ex-

pressly declared that all powers, not granted to them, "are reserved to the States or to the people" with what show of reason can it be contended that the Federal Government is to be the exclusive judge of the extent of its own powers?..

No doubt can exist, that, before the States entered into the compact, they possessed the right, to the fullest extent, of determining the limits of their own powers—it is incident to all sovereignty. Now, have they given away that right, or agreed to limit or restrict it in any respect? Assuredly not. They have agreed that certain specific powers shall be exercised by the Federal Government; but the moment that government steps beyond the limits of its charter, the right of the states "to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them," is as full and complete as it was before the constitution was formed. It was plenary then, and never having been surrendered, must be plenary now. But what then, asks the gentleman? A State is brought into collision with the United States, in relation to the exercise of unconstitutional powers; who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns as to the true construction of a compact.....

The creating power is three-fourths of the States. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows, of necessity, that, in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common superior—(that power which may give any character to the constitution they may think proper) viz: three-fourths of the States. This is the view of the matter taken by Mr. Jefferson himself, who, in 1821, expressed himself in this emphatic manner: "It is a fatal heresy to suppose that either our state Governments are superior to the Federal, or the Federal to the State; neither is authorized literally to decide what belongs to itself, or its co-partner in government, in difference of opinion between their different sets of public servants; the appeal is to neither, but to their employers, peaceably assembled by their representatives in convention."

But it has been asked, why not compel a state, objecting to the constitutionality of a law, to appeal to their sister States, by a proposition to amend the constitution? I answer, because such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the States are not bound to submit to, even for a day, and because it would be absurd to suppose that any redress could ever be obtained by such an appeal, even if a State were at liberty to make it.....

The gentleman has called upon us to carry out our scheme practically. Now, sir, if I am correct in my view of this matter, then it follows, of course, that the right of a State being established, the Federal Government is bound to acquiesce in a solemn decision of a State, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment to the constitution. This solemn decision of a state (made either through its Legislature, or a convention, as may be supposed to be the proper organ of its sovereign will—a point I do not propose now to discuss) binds the Federal Government, under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting State. How, then, can any collision ensue between the Federal and State Governments, unless, indeed, the former should determine to enforce the law by unconstitutional means? What could the Federal Government do, in such a case? Resort, says the gentleman, to the courts of justice. Now, can any man believe that, in the face of a solemn decision of a State, that an act of Congress is "a gross, palpable, and deliberate violation of the constitution," and the interposition of its sovereign authority to protect its citizens from the usurpation, that juries could be found ready merely to register the decrees of the Congress, wholly regardless of the unconstitutional character of their acts? Will the gentleman contend that juries are to be coerced to find verdicts at the point of the bayonet?.....

Sir, if Congress should ever attempt to enforce any such laws, they would put themselves so clearly in the wrong, that no one could doubt the right of the State to exert its protecting power.....—*Congressional Debates*, VI., part I., 86-92, passim.

4—1830, Jan. 26. Webster's Second Reply to Hayne.

.....There yet remains to be performed, Mr. President, by far the most grave and important duty, which I feel to be devolved on me by this occasion. It is to state and defend, what I consider to be the true principles of the Constitution under which we are here assembled.....

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State legislatures to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing *under* the Constitution, not as a right to overthrow it on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that, if the exigency of the case, in the opinion of any State government require it, such State government may, by its own sovereign authority, annul an act of the general government which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine, and the doctrine which he maintains. I propose to consider it, and compare it with the Constitution.....

.....What he contends for is, that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it,

by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine that unconstitutional laws bind the people. The great question is, Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the Constitution by Congress, the States have a constitutional right to interfere and annul the law of Congress, is the proposition of the gentleman. I do not admit it. If the gentleman had intended no more than to assert the right of revolution for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution or rebellion, on the other. I say, the right of a State to annul a law of Congress cannot be maintained, but on the ground of the inalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the Constitution and in defiance of the Constitution, which may be resorted to when a revolution is to be justified. But I do not admit, that, under the Constitution and in conformity with it, there is any mode in which a State government, as a member of the Union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government and the source of its power. Whose agent is it? Is it the creature of the State legislatures, or the creature of the people? If the Government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this general government is the creature of the States,

but that it is the creature of each of the States severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, Sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the State governments. We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State governments, or to the people themselves. So far as the people have restrained State sovereignty by the expression of their will, in the Constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred propounds that State sovereignty is only to be controlled by its own "feeling of justice"; that is to say, it is not to be controlled at all, for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of

sovereignty; but the Constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the Constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." The opinion referred to, therefore, is in defiance of the plainest provisions of the Constitution.....

It so happens that, at the very moment, when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. *They* hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional and highly expedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely, upon the old Confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union! What is such a state of things but a mere connection during pleasure, or, to use the phraseology of the times, *during feeling?* And that feeling, too, not the feeling of the people, who established the Constitution, but the feeling of the State governments.....

I must now beg to ask, Sir, Whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion founded

in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people as the State governments. It is created for one purpose; the State governments for another. It has its own powers, they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the Constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole government, President, Senate, and House of Representatives is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, Sir, is the independent offspring of the popular will. It is not the creature of State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this Constitution, Sir, be the creature of State legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, Sir, erected this government. Th gave it a Constitution, and in that Constitution they ha enumerated the powers which they bestow on it. Th have made it a limited government. They have defined i authority. They have restrained it to the exercise of su powers as are granted; and all others, they declare, are r served to the States, or the people. But, Sir, they have n stopped here. If they had, they would have accomplish but half their work. No definition can be so clear as avoid the possibility of doubt; no limitation so precise, to exclude all uncertainty. Who, then, shall construe th grant of the people? Who shall interpret their will, whe it may be supposed they have left it doubtful? With who do they repose this ultimate right of deciding on the powe of the government? Sir, they have settled all this in tl fullest manner. They have left it with the government itse in its appropriate branches. Sir, the very chief end, tl main design, for which the whole Constitution was fram and adopted, was to establish a government that should n be obliged to act through State agency, or depend on Sta opinion or State discretion. The people had had qui enough of that kind of government under the Confederatio Under that system, the legal action, the application of la to individuals, belonged exclusively to the States. Congre could only recommend; their acts were not of binding forc till the States had adopted and sanctioned them. Are we that condition still? Are we yet at the mercy of State di cretion and State construction? Sir, if we are, then va will be our attempt to maintain the Constitution under whi we sit.

But, Sir, the people have wisely provided, in the Constit tion itself, a proper, suitable mode and tribunal for settlir questions of constitutional law. There are in the Constit tion grants of powers to Congress, and restrictions on the powers. There are, also, prohibitions on the States. Son authority must, therefore, necessarily exist, having the ul mate jurisdiction to fix and ascertain the interpretation these grants, restrictions, and prohibitions. The Constit tion has itself pointed out, ordained, and established th authority. How has it accomplished this great and essenti end? By declaring, Sir, that "*the Constitution and the la*

of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

This, sir, was the first great step. By this the supremacy of the Constitution and the laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, "*that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.*" These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government, without them a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what gives them the right to say to the people: "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent,—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in an extreme case, a State government may protect the people from intolerable oppression. Sir, in such a case the people might protect themselves without the aid of the State governments. Such a case warrants revolution.....

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided in which those doubts as they should arise, might be peaceably but authoritatively, solved.....

But, Sir, what is this danger, and what are the grounds of it? Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.....

....I profess, Sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, Sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty

when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union may be best preserved, but how tolerable might be the condition of the people when it should be broken up and destroyed. While the Union lasts we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that in my day at least that curtain may not rise! God grant that on my vision never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, not a single star obscured, bearing for its motto, no such miserable interrogatory as "What is all this worth?" nor those other words of delusion and folly, "Liberty first and Union afterwards"; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart,—Liberty *and* Union, now and forever, one and inseparable!—DANIEL WEBSTER, *Works*, III., 317–342 passim.

5—1830, Jan. 27. Webster's Concluding Remarks.

A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions and an inference. His propositions are,—

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one of all power whatever.

3. Therefore, (such is his inference), the General Government does not possess the authority to construe its own powers.

Now, Sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas involved in this so elaborate and systematic argument.

The Constitution, it is said, is a compact *between States;* the States, then, and the States only, *are parties* to the compact. How comes the general government itself a *party?* Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the Constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses to consider the general government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, without the power of judging on the terms of compact. Pray, Sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main propositions were conceded to him; that is to say, if I admit, for the sake of argument, that the Constitution is a compact between States, the inferences which he draws from that proposition are warranted by no just reasoning. If the Constitution be a compact between States, still that Constitution, or that compact, has established a government with certain powers; and whether it be one of those powers, that it shall construe and interpret for itself the terms of the compact in doubtful cases, is a question which can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the government even thus created might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for *in the instrument* itself.

If the old Confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any State law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress under the confederation, although that confederation was a compact between States; and for this plain reason; that it would have been competent to the States, who alone were parties to the compact, to agree who should decide in cases of dispute arising on the construction of the compact.

For the same reason, Sir, if I were now to concede to the gentleman his principal proposition, namely, that the Constitution is a compact between States, the question would still be, What provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? And this question would still be answered, and conclusively answered by the Constitution itself.

While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The Constitution declares, that the *laws of Congress passed in pursuance of the Constitution shall be the supreme law of the land.* No construction is necessary here. It declares, also, with equal plainness and precision, *that the judicial power of the United States shall extend to every case arising under the law of Congress.* This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, Sir, how has the gentleman met this? Suppose the Constitution to be a compact, yet here are its terms; and how does the gentleman get rid of them? He cannot argue the *seal off the bond,* nor the words out of the instrument. Here they are; what answer does he give to them? None in the world, Sir, except, that the effect of this would be to place the States in a condition of inferiority; and that it results from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the Constitution. The gentleman

says, if there be such a power of final decision in the general government, he asks for the grant of that power. Well, Sir, I show him the grant. I turn him to the very words. I show him that the laws of Congress are made supreme; and that the judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result *from the nature of things*, that the States, being parties, must judge for themselves.

I have admitted, that, if the Constitution were to be considered as the creature of the State governments, it might be modified, interpreted, or construed according to their pleasure. But, even in that case, it would be necessary that they should *agree*. One alone could not interpret it conclusively; one alone could not construe it; one alone could not modify it. Yet the gentleman's doctrine is, that Carolina alone may construe and interpret that compact which equally binds all, and gives equal rights to all.

So, then, Sir, even supposing the Constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *government* established by it, and vested by it with the powers of trying and deciding doubtful questions; and secondly, because, if the Constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, Sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, Sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the Constitution is a compact between State governments. The Constitution, itself, in its very front, refutes that idea; it declares that it is ordained and established *by the people of the United States*. So far from saying that it is established by the governments of the several States, it does not even say that it is established by the people *of the several States;* but it pronounces that it is established by the people of the United States, in the aggregate. The gentleman says, it must mean no more than the people of the several States. Doubtless,

the people of the several States, taken collectively, constitute the people of the United States; but it is in this, their collective capacity, it is all the people of the United States, that they established the Constitution. So they declare; and words cannot be plainer than the words used.

When the gentleman says the Constitution is a compact between the States, he uses language exactly applicable to the old Confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The Confederation was, in strictness, a compact; the States, as States, were parties to it. We had no other general government. But that was found insufficient and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis; not a confederacy, not a league, not a compact between States, but a *Constitution;* a popular government, founded in popular election, directly responsible to the people themselves, and divided into branches with prescribed limits of power, and prescribed duties. They ordained such a government, they gave it the name of a *Constitution*, and therein they established a distribution of power between this, their general government, and their several State governments. When they become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the States.

The gentleman, Sir, finds analogy where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of government, with powers to execute itself, and fulfil its duties.

I admit, Sir, that this government is a government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different governments. He argues, that, if we

transgress our constitutional limits, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the State government each in its proper sphere, avoiding as carefully as possible every kind of interference.

Finally, Sir, the honorable gentleman says, that the States will only interfere by their power, to preserve the Constitution. They will not destroy it, they will not impair it; they will only save, they will only preserve, they will only strengthen it! Ah! Sir, this is but the old story. All regulated governments, all free governments, have been broken by similar disinterested and well-disposed interference. It is the common pretence. But I take leave of the subject.—DANIEL WEBSTER, *Works*, III., 343-347.

6—1833, Feb. 15, 16. Calhoun's Speech on the Force Bill.

The Federal Government has, by an express provision of the constitution, the right to lay imports. The State has never denied or resisted this right, nor even thought of so doing. The Government has, however, not been contented with exercising this power as she has a right to do, but has gone a step beyond it, by laying imposts, not for revenue, but protection. This the State considers as an unconstitutional exercise of power—highly injurious and oppressive to her and the other staple States, and has, accordingly, met it with the most determined resistance. .....

There is another misstatement, as to the nature of the controversy, so frequently made in debate, and so well calculated to mislead, that I feel bound to notice it. It has been said that South Carolina claims the right to annul the constitution and laws of the United States; and to rebut this supposed claim, the gentleman from Virginia (Mr. Rives) has gravely quoted the constitution, to prove that the constitution, and the laws made in pursuance thereof, are the *supreme laws of* the land—as if the State claimed the right to

act contrary to this provision of the constitution. Nothing can be more erroneous: her object is not to resist laws made in pursuance of the constitution, but those made without its authority, and which encroached on her reserved powers. She claims not even the right of judging of the delegated powers, but of those that are reserved; and to resist the former, when they encroach upon the latter. I will pause to illustrate this point.

All must admit that there are delegated and reserved powers, and that the powers reserved are reserved to the States respectively. The powers, then, of the system are divided between the General and the State Governments; and the point immediately under consideration is, whether a State has any right to judge as to the extent of its reserved powers, and to defend them against the encroachments of the General Government. .....

.....What, then, is meant by a division of power? I cannot conceive of a division, without giving an equal right to each to judge of the extent of the power allotted to each. Such right I hold to be essential to the existence of a division; and that, to give to either party the conclusive right of judging, not only of the share allotted to it, but of that allotted to the other, is to annul the division, and to confer the whole power on the party vested with such right.

But it is contended that the constitution has conferred on the Supreme Court the right of judging between the States and the General Government. Those who make this objection, overlook, I conceive, an important provision of the constitution. By turning to the 10th amended article, it will be seen that the reservation of power to the States is not only against the power, delegated to Congress, but against the United States themselves; and extends, of course, as well to the judiciary as to the other departments of the Government.....The reservation of powers to the States is, as I have said, against the whole; and is as full against the judicial as it is against the executive and legislative departments of the Government. It cannot be claimed for the one without claiming it for the whole; and without, in fact, annulling this important provision of the constitution.

Against this, as it appears to me, conclusive view of the

subject, it has been urged that this power is expressly conferred on the Supreme Court by that portion of the constitution which provides that the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority. I believe the assertion to be utterly destitute of any foundation. It obviously is the intention of the constitution simply to make the judicial power commensurate with the law-making and treaty-making powers; and to vest it with the right of applying the constitution, the laws, and the treaties, to the cases which might arise under them; and not to make it the judge of the constitution, the laws, and the treaties themselves.....But it will be asked how the court obtained the power to pronounce a law or treaty unconstitutional, when it comes in conflict with that instrument. I do not deny that it possesses the right; but I can by no means concede that it was derived from the constitution. It had its origin in the necessity of the case. Where there are two or more rules established, one from a higher, the other from a lower authority, which may come into conflict in applying them to a particular case, the judge cannot avoid pronouncing in favor of the superior against the inferior. It is from this necessity, and this alone, that the power which is now set up to overrule the rights of the States against an express provision of the constitution was derived. It had no other origin. That I have traced it to its true source, will be manifest from the fact that it is a power which, so far from being conferred exclusively on the Supreme Court, as is insisted, belongs to the every court—inferior or superior—State and General—and even to foreign courts.....

The people of Carolina believe that the Union is a union of States, and not of individuals; that it was formed by the States, and that the citizens of the several States were bound to it through the acts of their several States; that each State ratified the Constitution for itself, and that it was only by such ratification of a State that any obligation was imposed upon its citizens. Thus believing, it is the opinion of the people of Carolina that it belongs to the State which has imposed the obligation to declare, in the last resort, the *extent of* this obligation, as far as her citizens are concerned;

and this upon the plain principles which exist in all analogous cases of compact between sovereign bodies. On this principle the people of the State, acting in their sovereign capacity in convention, precisely as they did in the adoption of their own and the federal constitution, have declared, by the ordinance, that the acts of Congress which imposed duties under the authority to lay imposts, were acts not for revenue, as intended by the Constitution, but for protection, and therefore null and void. The ordinance thus enacted by the people of the State themselves, acting as a sovereign community, is as obligatory on the citizens of the State as any portion of the Constitution.....

The very point at issue between the two parties there is, whether nullification is a peaceful and an efficient remedy against an unconstitutional act of the General Government, and may be asserted, as such, through the State tribunals...

Is this a federal union? a union of States, as distinct from that of individuals? Is the sovereignty in the several States, or in the American people in the aggregate? The very language which we are compelled to use when speaking of our political institutions, affords proof conclusive as to its real character. The terms union, federal, united, all imply a combination of sovereignties, a confederation of States. They never apply to an association of individuals. Who ever heard of the United State of New-York, of Massachusetts, or of Virginia? Who ever heard the term federal or union applied to the aggregation of individuals into one community? Nor is the other point less clear—that the sovereignty is in the several States, and that our system is a union of twenty-four sovereign powers, under a constitutional compact, and not of a divided sovereignty between the States severally and the United States? In spite of all that has been said, I maintain that sovereignty is in its nature indivisible. It is the supreme power in a State, and we might just as well speak of half a square, or half of a triangle, as of half a sovereignty. It is a gross error to confound the *exercise* of sovereign powers with *sovereignty* itself, or the *delegation* of such powers with the *surrender* of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with such limitations as he may impose; but to sur-

render any portion of his sovereignty to another is to annihilate the whole.....

.....As great as these objections are, they become insignificant in the provisions of a bill which, by a single blow—by treating the States as a mere lawless mass of individuals—prostrates all the barriers of the constitution. I will pass over the minor considerations, and proceed directly to the great point. This bill proceeds on the ground that the entire sovereignty of this country belongs to the American people, as forming one great community, and regards the States as mere fractions or counties, and not as integral parts of the Union; having no more right to resist the encroachments of the Government than a county has to resist the authority of a State; and treating such resistance as the lawless acts of so many individuals, without possessing sovereignty or political rights.....

In the same spirit, we are told that the Union must be preserved, without regard to the means. And how is it proposed to preserve the Union? By force! Does any man in his senses believe that this beautiful structure—this harmonious aggregate of States, produced by the joint consent of all—can be preserved by force? Its very introduction will be certain destruction to this Federal Union. No, no. You cannot keep the States united in their constitutional and federal bonds by force. Force may, indeed, hold the parts together, but such union would be the bond between master and slave—a union of exaction on one side and of unqualified *obedience* on the other..... Has reason fled from our borders? Have we ceased to reflect? It is madness to suppose that the Union can be preserved by force. I tell you plainly, that the bill, should it pass, cannot be enforced. It will prove only a blot upon your statute-book, a reproach to the year, and a disgrace to the American Senate. I repeat, it will not be executed; it will rouse the dormant spirit of the people, and open their eyes to the approach of despotism.....

But to return to the point immediately under consideration. I know that it is not only the opinion of a large majority of our country, but it may be said to be the opinion of the age, that the very beau ideal of a perfect government *is the government* of the majority, acting through a repre-

sentative body, without check or limitation on its power; yet, if we may test this theory by experience and reason, we shall find that, so far from being perfect, the necessary tendency of all governments, based upon the will of an absolute majority, without constitutional check or limitation of power, is to faction, corruption, anarchy, and despotism; and this, whether the will of the majority be expressed directly through an assembly of the people themselves, or by their representatives. I know that, in venturing this assertion, I utter what is unpopular both within and without these walls; but where truth and liberty are concerned, such considerations should not be regarded. I will place the decision of this point on the fact that no government of the kind, among the many attempts which have been made, has ever endured for a single generation, but, on the contrary has invariably experienced the fate which I have assigned to it.....

.....To understand what our Government is, we must look to the constitution, which is the basis of the system. I do not intend to enter into any minute examination of the origin and source of its powers: it is sufficient for my purposes to state, what I do fearlessly, that it derived its power from the people of the separate States, each ratifying by itself, each binding itself by its own separate majority, through its separate convention,—the concurrence of the majorities of the several States forming the constitution;—thus taking the sense of the whole by that of the several parts, representing the various interests of the entire community. It was this concurring and perfect majority which formed the constitution, and not that majority which would consider the American people as a single community, and which, instead of representing fairly and fully the interests of the whole, would but represent, as has been stated, the interests of the stronger section.....

In administering the delegated powers, the constitution provides, very properly, in order to give promptitude and efficiency, that the Government shall be organized upon the principle of the absolute majority, or, rather, of two absolute majorities combined: a majority of the States considered as bodies politic, which prevails in this body; and a majority of the people of the States, estimated in federal

numbers, in the other House of Congress. A combination of the two prevails in the choice of the President, and, of course, in the appointment of Judges, they being nominated by the President and confirmed by the Senate. It is thus that the concurring and the absolute majorities are combined in one complex system: the one in forming the constitution, and the other in making and executing the laws; thus beautifully blending the moderation, justice, and equity of the former, and more perfect majority, with the promptness and energy of the latter, but less perfect.....

In estimating the operation of this principle in our system, which depends, as I have stated, on the right of interposition on the part of a State, we must not omit to take into consideration the amending power, by which new powers may be granted, or any derangement of the system corrected, by the concurring assent of three-fourths of the States; and thus, in the same degree, strengthening the power of repairing any derangement occasioned by the eccentric action of a State. In fact, the power of interposition, fairly understood, may be considered in the light of an appeal against the usurpations of the General Government, the joint agent of all the States, to the States themselves——to be decided under the amending power, by the voice of three-fourths of the States, as the highest power known under the system.....—JOHN C. CALHOUN, *Works*, II, 198–260 passim.

7—1833, Feb. 16. Webster's Reply to Calhoun.

.....The first two resolutions of the honorable member affirm these propositions, viz:—

1. That the political system under which we live, and under which Congress is now assembled, is a *compact*, to which the people of the several States, as separate and sovereign communities, are the *parties*.

2. That these sovereign parties have a right to judge, each for itself, of an alleged violation of the Constitution by Congress; and, in case of such violation, to choose, each for itself, its own mode and measure of redress.

It is true, Sir, that the honorable member calls this a "*constitutional*" compact; but still he affirms it to be a com-

pact between sovereign States. What precise meaning then, does he attach to the term *constitutional?* When applied to compacts between sovereign States the term *constitutional* affixes to the word *compact* no definite idea.....

.....Sir, I must say to the honorable gentleman, that, in our American political grammar, CONSTITUTION is a noun substantive; it imparts a distinct and clear idea of itself; and it is not to lose its importance and dignity, it is not to be turned into a poor, ambiguous, senseless, unmeaning adjective, for the purpose of accommodating any new set of political notions.....

The first resolution declares that the people of the several States "*acceded*" to the Constitution, or to the constitutional compact, as it is called. This word "accede," not found either in the Constitution itself, or in the ratification of it by any one of the States, has been chosen for use here, doubtless, not without a well considered purpose.

The natural converse of *accession* is *secession;* and, therefore, when it is stated that the people of the States acceded to the union, it may be more plausibly argued that they may secede from it. If, in adopting the Constitution, nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. But the term is wholly out of place..... Inasmuch as they were already in union, they did not speak of *acceding* to the new Articles of Confederation, but of *ratifying* and *confirming* them.....

Therefore, Sir, since any State, before she can prove her right to dissolve the Union, must show her authority to undo what has been done, no State is at liberty to *secede*, on the ground that she and the other States have done nothing but *accede.* She must show that she has a right to *reverse* what has been *ordained*, to *unsettle* and *overthrow* what has been *established*, to *reject* what the people have *adopted*, and to *break up* what they have ratified; because these are the terms which express the transactions which have actually taken place. In other words, she must show her right to make a revolution.....

The Constitution does not provide for events which must be preceded by its own destruction. Secession, therefore, since it must bring these consequences with it, is REVOLU-

TIONARY, and NULLIFICATION is equally REVOLUTIONARY. What is revolution? Why, Sir, that is revolution which overturns, or controls, or successfully resists the existing public authority; that which arrests the exercise of the supreme power; that which introduces a new paramount authority into the rule of the State. Now, Sir, this is the precise object of nullification. It attempts to supersede the supreme legislative authority. It arrests the arm of the executive magistrate. It interrupts the exercise of the accustomed judicial power. Under the name of an ordinance, it declares null and void, within the State, all the revenue laws of the United States. Is not this revolutionary? Sir, so soon as this ordinance shall be carried into effect, *a revolution* will have commenced in South Carolina. She will have thrown off the authority to which her citizens have heretofore been subject. She will have declared her own opinions and her own will to be above the laws and above the power of those who are intrusted with their administration. If she makes good these declarations, she is revolutionized.....

Mr. President, the alleged right of a State to decide constitutional questions for herself necessarily leads to force, because other States must have the same right, and because different States will decide differently; and when these questions arise between States, if there be no superior power, they can be decided only by the law of force. On entering into the Union the people of each State gave up a part of their own power to make laws for themselves, in consideration that, as to common objects, they should have a part in making laws for other States. In other words, the people of all the States agreed to create a common government to be conducted by common counsels.....

Such, Sir, are the inevitable results of this doctrine. Beginning with the original error, that the Constitution of the United States is nothing but a compact between sovereign States; asserting, in the next step, that each State has a right to be its own sole judge of the extent of its own obligations, and consequently of the constitutionality of laws of Congress; and, in the next, that it may oppose whatever it sees fit to declare unconstitutional, and that it decides for itself on the mode and measure of redress,—the argument arrives at once at the conclusion, that what a State dissents

from, it may nullify; what it opposes, it may oppose by force; what it decides for itself, it may execute by its own power; and that, in short, it is itself supreme over the legislation of Congress, and supreme over the decisions of the national judicature; supreme over the constitution of the country, supreme over the supreme law of the land. However it seeks to protect itself against these plain inferences, by saying that an unconstitutional law is no law, and that it only opposes such laws as are unconstitutional, yet this does not in the slightest degree vary the result; since it insists on deciding this question for itself; and, in opposition to reason and argument, in opposition to practice and experience, in opposition to the judgment of others, having an equal right to judge, it says, only, "Such is my opinion, and my opinion shall be my law, and I will support it by my own strong hand. I denounce the law; I declare it unconstitutional; that is enough; it shall not be executed. Men in arms are ready to resist its execution. An attempt to enforce it shall cover the land with blood. Elsewhere it may be binding; but here it is trampled under foot."

This, Sir, is practical nullification.

And now, Sir, against all these theories and opinions, I maintain,—

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

3. That there is a supreme law consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties; and that, in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret, this supreme law so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, on the ground that, in her opinion, such law is unconstitutional, is a direct usurpation on the just powers of the general government, and on the equal rights of other States; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

Whether the Constitution be a compact between States in their sovereign capacities, is a question which must be mainly argued from what is contained in the instrument itself.....It declares itself a Constitution. What is a *Constitution?* Certainly not a league, compact, or confederacy, but a *fundamental law*. .....

It appears to me, Mr. President, that the plainest account of the establishment of this government presents the most just and philosophical view of its foundation. The people of the several States had their separate State governments; and between the States there also existed a Confederation. With this condition of things the people were not satisfied, as the Confederation had been found not to fulfill its intended objects. It was *proposed*, therefore, to erect a new, common government, which should possess certain definite powers, such as regarded the prosperity of the people of all the States, and to be formed upon the general model of American constitutions. This proposal was assented to, and an instrument was presented to the people of the several States for their consideration. They approved it, and agreed to adopt it, as a Constitution. They executed that agreement; they adopted the Constitution as a Constitution, and henceforth it must stand as a Constitution until it shall be altogether destroyed.....

The truth is, Mr. President, and no ingenuity of argument, no subtilty of distinction can evade it, that, as to certain purposes, the people of the United States are one people. They are one in making war, and one in making peace; they are one in regulating commerce, and one in laying duties of imposts. The very end and purpose of the Constitution was, to make them one people in these particulars; and it has effectually accomplished its object.....

But, sir, let us go to the actual formation of the Constitution, let us open the journal of the Convention itself, and

we shall see that the very first resolution which the Convention adopted, was, "THAT A NATIONAL GOVERNMENT OUGHT TO BE ESTABLISHED, CONSISTING OF A SUPREME LEGISLATURE, JUDICIARY, AND EXECUTIVE."

This itself completely negatives all idea of league, and compact, and confederation. Terms could not be chosen more fit to express an intention to establish a national government, and to banish for ever all notion of a compact between sovereign States.....

Among all the other ratifications, there is not one which speaks of the Constitution as a compact between States. Those of Massachusetts and New Hampshire express the transaction, in my opinion, with sufficient accuracy. They recognize the Divine goodness "in affording THE PEOPLE OF THE UNITED STATES an opportunity of entering into an explicit and solemn compact with each other, *by assenting to and ratifying a new Constitution.*" You will observe, Sir, that it is the PEOPLE, and not the States, who have entered into this compact; and it is the PEOPLE of all the United States.....

Finally, sir, how can any man get over the words of the Constitution itself?—"*We, the people of the United States, do ordain and establish this Constitution.*" These words must cease to be a part of the Constitution, they must be obliterated from the parchment on which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States.

The second proposition, Sir, which I propose to maintain is, that no State authority can dissolve the relations subsisting between the government of the United States and individuals; that nothing can dissolve these relations but revolution; and that, therefore, there can be no such thing as *secession* without revolution. All this follows, as it seems to me, as a just consequence, if it be first proved that the Constitution of the United States is a government proper, owing protection to individuals, and entitled to their obedience.

The people, Sir, in every State, live under two governments. They owe obedience to both. These governments,

though distinct, are not adverse. Each has its separate sphere, and its peculiar powers and duties. It is not a contest between two sovereigns for the same power, like the wars of rival houses in England; nor is it a dispute between a government *de facto* and a government *de jure.* It is the case of a division of powers between two governments, made by the people, to whom both are responsible. Neither can dispense with the duty which individuals owe to the other; neither can call itself master of the other: the people are masters of both.....

In the next place, Mr. President, I contend that there is a supreme law of the land, consisting of the Constitution, acts of Congress passed in pursuance of it, and the public treaties. This will not be denied, because such are the very words of the Constitution. But I contend, further, that it rightfully belongs to Congress, and to the courts of the United States, to settle the construction of this supreme law, in doubtful cases. This is denied; and here arises the great practical question, *Who is to construe finally the Constitution of the United States?*.....

And in regard, Sir, to the judiciary, the Constitution is still more express and emphatic. It declares that the judicial power shall extend to all *cases* in law or equity arising under the Constitution, laws of the United States, and treaties; that there shall be *one* Supreme Court, and that this Supreme Court shall have appellate jurisdiction of all these cases, subject to such exceptions as Congress may make. It is impossible to escape from the generality of these words. If a case arises under the Constitution, that is, if a case arises depending on the construction of the Constitution, the judicial power of the United States extends to it. It reaches *the case, the question;* it attaches the power of the national judicature to the *case* itself, in whatever court it may arise or exist; and in this *case* the Supreme Court has appellate jurisdiction over all courts whatever. No language could provide with more effect and precision than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court.....

Sir, those who espouse the doctrines of nullification reject, as it seems to me, the first great principle of all republican liberty; that is, that the majority *must* govern. In matters of

common concern, the judgment of a majority *must* stand as a judgment of the whole. This is a law imposed upon us by the absolute necessity of the case; and if we do not act upon it, there is no possibility of maintaining any government but despotism. We hear loud and repeated denunciations against what is called *majority government.* It is declared, with much warmth, that a majority government cannot be maintained in the United States. What, then, do gentlemen wish? Do they wish to establish a *minority* government? Do they wish to subject the will of the many to the will of the few? The honorable gentleman from South Carolina has spoken of absolute majorities and majorities concurrent; language wholly unknown to our Constitution, and to which it is not easy to affix definite ideas. As far as I understand it, it would teach us that the absolute majority may be found in Congress, but the majority concurrent must be looked for in the States; that is to say, Sir, stripping the matter of this novelty of phrase, that the dissent of one or more States, as States, renders void the decision of a majority of Congress, so far as that State is concerned. And so this doctrine, running but a short career, like other dogmas of the day, terminates in nullification.—DANIEL WEBSTER, *Works*, III., 451–487 passim.

8—1833, Feb. 26. Calhoun's Reply to Webster.

....."*Resolved*, That the people of the several States composing these United States are united as parties to a constitutional compact, to which the people of each State acceded as a separate and sovereign community, each binding itself by its own particular ratification; and that the Union, of which the said compact is the bond, is a Union *between the States* ratifying the same.

"*Resolved*, That the people of the several States thus united by the constitutional compact, in forming that instrument, and in creating a General Government to carry into effect the objects for which it was formed, delegated to that Government, for that purpose, certain definite powers, to be exercised jointly, reserving, at the same time, each State to itself, the residuary mass of powers, to be exercised by its own separate government; and that, whenever the General

Government assumes the exercise of powers not delegated by the compact, its acts are unauthorized, void, and of no effect; and that the said Government is not made the final judge of the powers delegated to it, since that would make its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among sovereign parties, without any common judge, each has an equal right to judge for itself, as well of the infraction, as of the mode and measure of redress.

"*Resolved*, That the assertions that the people of these United States, taken collectively as individuals, are now, or ever have been, united on the principle of the social compact, and, as such, are now formed into one nation or people, or that they have ever been so united, in any one stage of their political existence; that the people of the several States composing the Union have not, as members thereof, retained their sovereignty; that the allegiance of their citizens has been transferred to the General Government; that they have parted with the right of punishing treason through their respective State Governments; and that they have not the right of judging, in the last resort, as to the extent of powers reserved, and, of consequence, of those delegated, are not only without foundation in truth, but are contrary to the most certain and plain historical facts, and the clearest deductions of reason; and that all exercise of power on the part of the General Government, or any of its departments, deriving authority from such erroneous assumptions, must of necessity be unconstitutional—must tend directly and inevitably to subvert the sovereignty of the States—to destroy the federal character of the Union, and to rear on its ruins a consolidated government, without constitutional check or limitation, which must necessarily terminate in the loss of liberty itself."....

I have now established, I hope, beyond the power of controversy, every allegation contained in the first resolution—that the constitution is a compact formed by the people of the several States, as distinct political communities, and subsisting and binding between the States in the same character; which brings me to the consideration of the consequences which may be fairly deduced, in reference to the character of our political system, from these established facts.

The first, and most important is, they conclusively establish that ours is a federal system—a system of States arranged in a Federal Union, each retaining its distinct existence and sovereignty. Ours has every attribute which belongs to a federative system. It is founded on compact; it is formed by sovereign communities, and is binding between them in their sovereign capacity.....

If we compare our present system with the old confederation, which all acknowledge to have been *federal* in its character, we shall find that it possesses all the attributes which belong to that form of government as fully and completely as that did. In fact, *in this particular*, there is but a single difference, and that not essential, as regards the point immediately under consideration, though very important in other respects. The confederation was the act of the State governments, and formed a union of governments. The present Constitution is the act of the States themselves, or, which is the same thing, of the people of the several States, and forms a union of them as sovereign communities. The States, previous to the adoption of the Constitution, were as separate and distinct political bodies as the governments which represented them, and there is nothing in the nature of things to prevent them from uniting under a compact, in a federal union, without being blended in one mass, any more than uniting the governments themselves, in like manner, without merging them in a single government.....

The Senator dwelt much on the point that the present system is a constitution and a government, in contradistinction to the old confederation, with a view of proving that the constitution was not a compact. Now, I concede to the Senator that our present system is a constitution and a government; and that the former, the old confederation, was not a constitution or government. Not, however, for the reason which he assigned, that the former was a compact, and the latter not, but from the difference of the origin from which the two compacts are derived. According to our American conception, the people alone can form constitutions or governments, and not their agents. It is this difference, and this alone, which makes the distinction. Had the old confederation been the act of the people of the several States, and not of their governments, that instrument, im-

perfect as it was, would have been a constitution, and the agency which it created to execute its powers, a government.....

.....Where does sovereignity reside? If I have succeeded in establishing the fact that ours is a federal system, as I conceive I conclusively have, that fact of itself determines the question which I have proposed. It is of the very essence of such a system, that the sovereignty is in the parts, and not in the whole; or, to use the language of Mr. Palgrave, the parts are the units in such a system, and the whole the multiple; and not the whole the unit and the parts the fractions. Ours, then, is a government of twenty-four sovereignties, united by a constitutional compact, for the purpose of exercising certain powers through a common government as their joint agent, and not a union of the twenty-four sovereignties into one, which, according to the language of the Virginia Resolutions, already cited, would form a consolidation.....

Another consequence is equally clear, that, whatever modifications were made in the condition of the States under the present Constitution, they extend only to the exercise of their powers by compact, and not to the sovereignty itself, and are such as sovereigns are competent to make: it being a conceded point, that it is competent to them to stipulate to exercise their powers in a particular manner, or to abstain altogether from their exercise, or to delegate them to agents, without in any degree impairing sovereignity itself. The plain state of the facts, as regards our government is, that these States have agreed by compact to exercise their sovereign powers jointly, as already stated; and that, for this purpose, they have ratified the compact in their sovereign capacity, thereby making it the constitution of each State, in nowise distinguished from their own separate constitutions, but in the superadded obligations of compact—of faith mutually pledged to each other. In this compact, they have stipulated, among other things, that it may be amended by three-fourths of the States: that is, they have conceded to each other by compact the right to add new powers or to subtract old, by the consent of that proportion of the States, without requiring, as otherwise would have been the case, the consent of all: a modification no more incon-

sistent, as has been supposed, with their sovereignty, than any other contained in the compact. In fact, the provision to which I allude furnishes strong evidence that the sovereignty is, as I contend, in the States severally, as the amendments are effected, not by any one three-fourths, but by any three-fourths of the States, indicating that the sovereignty is in each of the States.

If these views be correct, it follows, as a matter of course, that the allegiance of the people is to their several States, and that treason consists in resistance to the joint authority of the *States* united, not, as has been absurdly contended, in resistence to the *Government* of the United States, which, by the provision of the Constitution, has only the right of punishing.....

.....no one has ever denied that the constitution, and the laws made in *pursuance* of it, are of paramount authority. But it is equally undeniable that laws *not* made in pursuance are not only not of paramount authority, but are of no authority whatever, being of themselves null and void; which presents the question, Who are to judge whether the laws be or be not pursuant to the constitution? and thus the difficulty, instead of being taken away, is removed but one step further back.....

.....I would ask the Senator upon what principle can he concede this extensive power to the legislative and judicial departments, and withhold it entirely from the Executive? If one has the right it cannot be withheld from the other. I would also ask him on what principle—if the departments of the General Government are to possess the right of judging, finally and conclusively, of their respective powers—on what principle can the same right be withheld from the State Goverments, which, as well as the General Government, properly considered, are but departments of the same general system, and form together, properly speaking, but one government?.....

.....I would further tell the Senator, that, if this right be withheld from the State Governments; if this restraining influence, by which the General Government is confined to its proper sphere, be withdrawn, then that department of the Government from which he has withheld the right of judging of its own powers (the Executive) will, so

far from being excluded, become the *sole* interpreter of the powers of the Government. It is the *armed* interpreter, with powers to execute its own construction, and without the aid of which the construction of the other departments will be impotent.

.....To prove that ours is a consolidated government, and that there is an immediate connection between the Government and the citizen, he relies on the fact that the laws act directly on individuals. That such is the case I will not deny; but I am very far from conceding the point that it affords the decisive proof, or even any proof at all, of the position which the Senator wishes to maintain. I hold it to be perfectly within the competency of two or more States, to subject their citizens, in certain cases, to the direct action of each other, without surrendering or impairing their sovereignty..... ....

I, for my part, have no fear of any dangerous conflict, under the fullest acknowledgment of State sovereignty: the very fact that the States may interpose will produce moderation and justice. The General Government will abstain from the exercise of any power in which they may suppose three-fourths of the States will not sustain them; while, on the other hand, the States will not interpose but on the conviction that they will be supported by one-fourth of their co-States. Moderation and justice will produce confidence, attachment, and patriotism; and these, in turn, will offer most powerful barriers against the excess of conflicts between the States and the General Government.....—JOHN C. CALHOUN, *Works*, II., 262–304.

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